

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5545 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

K C MODI

Versus

SECRETARY

Appearance:

MR NK MAJMUDAR for Petitioner

MS SIDDHI TALATI for Respondent No.1 & 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/09/97

ORAL JUDGMENT

#. The petitioner, a Junior Industries Inspector, filed this Special Civil Application and prayer has been made therein for direction to the respondents to issue

necessary orders of confirming the petitioner on the post of Junior Industries Inspector and further directions to the respondents to release immediately the due increments as well as to allow him to cross efficiency bar which he was not allowed to cross since 1982.

#. The facts of the case, in brief, are that the petitioner was appointed, on probation for two years, after selection on the post of Junior Industries Inspector. The period of probation came to an end in the first week of January 1979. At that point of time, neither he was confirmed nor any order of extension of his probation period has been made. It is also not in dispute that the petitioner, prior to his appointment after selection as Junior Industries Inspector, was working in the Department, as clerk since 1966. As the petitioner was under probation his grade increments were not released. Vide letter dated 4.1.83 of the respondents, the petitioner was communicated adverse entries for the period between 1.4.81 to 15.10.81. Against these adverse entries, the petitioner submitted a representation. That representation of the petitioner came to be dismissed under the letter dated 11.4.84. Vide letter dated 31.12.83, the petitioner was communicated adverse entries for the period from 1.4.82 to 31.3.83. As per the petitioner's case, he filed representation against these entries whereas as per the case of respondents he has not filed any representation. The petitioner made a representation through union from time to time for release of his increment but nothing has been done. The General Manager of the District Industries Centre, Surendranagar, also wrote letter to the Government for confirmation of the petitioner and release of grade increments, but nothing has been done. Despite of submission of representations from all sides when nothing has been done, the petitioner approached this Court by this Special Civil Application. It appears that earlier the petitioner filed civil suit No.189 of 1981 in the Court of Civil Judge (S.D.), Gondal, but that has been later on withdrawn with liberty to file fresh suit.

#. Reply to this Special Civil Application has been filed by respondents but the copy of the same is not available on record. However, the learned counsel for the petitioner admits that a copy of the reply has been given to him by respondents. In view of this admission of learned counsel for the petitioner, I consider it to be appropriate to take a copy of reply on record of the Special Civil Application. In the reply, the respondents have given out a reason that as the petitioner's work was

not satisfactory, he was not confirmed and consequently his grade increments were not released.

#. During the course of arguments, the learned counsel for the petitioner submitted zerox copies of two orders of respondents which were taken on record with consent of the parties. Under one order, the petitioner was ordered to be confirmed on the post of Junior Industries Inspector from 1.4.84 and under the second order, the grade increments of the petitioner have been released for the period from 1.1.78 to 1.1.82, and thereafter his grade increments were not released as at that stage there was efficiency bar and for passing of the efficiency bar, a separate order was necessary of the competent officer. The learned counsel for the parties are in agreement that till date, no order regarding withholding or crossing of efficiency bar at this stage has been passed.

#. The learned counsel for the petitioner contended that after January 1979, no order of extension of term of probation of the petitioner has been made. However, the learned counsel for the petitioner admits that there is no provision for automatic confirmation of the petitioner but still when no order of confirmation has been made, it was obligatory on the part of respondents to pass appropriate order either of confirmation or extension of probation on expiry of two year term of probation. In the present case, under the order, a copy of which has been filed today in the Court, the petitioner was confirmed from 1.4.84. So by necessary implication, it comes out that his term of probation period was extended or stood extended from retrospective effect till 31st March 1984. The case of the petitioner for confirmation has to be considered with reference to the date January 1979 and to patch up their own inaction or omission, this order has been passed after more than seven years. It has next been contended that adverse remarks communicated to the petitioner deserve to be quashed and set aside, inter-alia on the ground that it has been served after more than six months of the due date as well as the petitioner was never pointed out any lapse or defect in his working. On merits, these remarks are otherwise not sustainable.

#. On the other hand, Smt. Siddhi Talati, learned counsel for respondents contended that merely because there is some delay in communication of adverse remarks, the same cannot be taken to have been vitiated. It has next been contended that there cannot be any limitation for giving of adverse remarks to the employees concerned and if such a limitation is prescribed then it will be detrimental to

the efficiency of the services and would breed seeds of corruption. It will be very convenient for the employees, in these days, to manipulate the communication of adverse remarks for this short period of six months and thereafter if adverse remarks are communicated then the same has to be expunged though they are very serious remarks. It has next been contended that even if the order of extension of probation period of the petitioner has not been made then too it will be a case of deemed extension of period of probation as no order of confirmation was made. Unless the order of confirmation of the petitioner is made, he continues on probation. Carrying this contention further, Smt.Siddhi Talati, learned counsel for the respondents contended that the petitioner cannot take any exception to the order made in the later years confirming him from 1.4.84. This order clinches the issue and necessary implication thereof is that the petitioner will be deemed to be under probation for a period ending on 31st March 1984. However, the learned counsel for the respondents admitted that normally, this course should not have been adopted. However, she has given out explantation that the Department got split in two Departments and as such this matter could not be taken note of. Lastly, the learned counsel for respondents contended that the petitioner has to be given benefit only in accordance with his confirmation from 1.4.84. It is true that the order of withholding or crossing the efficiency bar has not been made but all other increments which were due prior to reaching the stage of efficiency bar have been given and now the order will be passed. The service record of the petitioner is adverse and there is all possibility of withholding of his efficiency bar at the stage in question.

#. I have taken note of the contentions raised by learned counsel for the parties and examined them with reference to the pleadings of the parties. The learned counsel for respondents does not dispute that the case of petitioner of confirmation with reference to the date January 1979 has not been considered. In this case, I do not consider it to be necessary to go on larger issue raised by learned counsel for respondents that there cannot be any time bound programme for communication of adverse remarks to the employees. However, it is also not necessary in the present case to go on the question of the fact of non passing of the order of confirmation or extension of period of probation prior to the date on which the order of confirmation of petitioner from 1.4.84 has been passed. Further, I do not consider it appropriate to go on the question of deemed extension of

period of probation of the petitioner. The admitted facts of the case are that there were adversities in the service record of the petitioner but the adversity in service record of the petitioner was of the period from 1st April 1981 to 15th October 1981 and then from 1st April 1982 to 31st March 1983. There was no adversity whatsoever in the service record of the petitioner from January 1979 to 31st March 1981 as well as from 16th October 1981 to 31st March 1982. There is also nothing on record that the petitioner's work was not satisfactory from 1st April 1983 till 1st April 1984. After completion of period of probation it was obligatory on the part of respondents to consider the case of petitioner for his confirmation. In case his work was not found satisfactory at that point of time, then it was open for respondents to extend the period of probation of the petitioner, but it could not have been extended for a period of about five years at a time. It may be an extension for a reasonable period and at the end of each extended period it was obligatory on the part of respondents to examine the case of petitioner for confirmation. In the present case, this exercise has not been undertaken and only after more than seven years of the expiry of period of probation a decision has been taken and the petitioner has been confirmed from 1.4.84. Whatever may be the reason for not undertaking this exercise but the petitioner cannot be put to suffer on account of some inaction or omission or some administrative difficulties of respondents in discharging their obligation. Confirmation of the petitioner from the date beyond the last date of the probation period of two years has manifold repercussions, namely, loss of seniority as well as deferment of increment. Loss of seniority may have further serious consequence of loss of promotions. The aforesaid facts assume more importance in the present case for the reason that for a period from January 1979 to 31st March 1981, there were no adversities whatsoever in the service record of the petitioner. So for a period of more than two years, the petitioner's work was not stated to be adverse and the possibility of his confirmation at the end of his period of probation or within a reasonable proximity of time cannot be ruled out in these facts and circumstances. To patch up their own inaction or omission, the respondents felt satisfied by passing the order of confirmation of the petitioner after more than seven years of the end of probation period and further confirming him from 1.4.1984. But the petitioner cannot be allowed to suffer for their lapses or inactions or omissions. This confirmation of the petitioner from 1.4.84 may result in deprival of seniority to him and he will become junior to

many of the persons who have been selected and confirmed in between January 1979 to 31st March 1984. This will cause further loss of promotion to the petitioner. Even if for any reason whatsoever, this exercise could not have been undertaken by respondents, then too after this time gap, the case of the petitioner should have been examined with reference to the date January 1979 or with reference to the end of further period of extension of probation period.

#. Taking into consideration the totality of the facts of the case, interest of justice will be met in case this Special Civil Application is disposed of with directions to the respondents to consider the case of petitioner for his confirmation on the post of Junior Industries Inspector with reference to the date of end of period of first probation, i.e. January 1979. While examining the case of petitioner for confirmation with reference to that date, the respondents shall not take into consideration the adverse remarks which have been communicated to him for the periods 1st April 1981 to 15th October 1981 and 1st April 1982 to 31st March 1983. In case for the reasons to be recorded, the respondents consider it to be appropriate to extend the period of probation of the petitioner then it should have been done for a period of six months only at a time and again at each end of extension, his matter has to be considered for confirmation. This exercise has to be undertaken and completed within a period of four months from the date of receipt of writ of this order. Where any order adverse to the petitioner is made, then it should be a reasoned order and the same should be communicated to the petitioner by registered post. Where the petitioner is found suitable for confirmation from January 1979 or any date earlier to 1st April 1984, then he shall be entitled for all consequential benefits follow therefrom. The respondents shall also pass appropriate order for withholding or crossing of efficiency bar of the petitioner at the stage in question and while passing that order, it may examine the matter whether the adverse remarks communicated to the petitioner, after the long time gap, have to be taken into consideration or not. In case the petitioner is not allowed to cross efficiency bar or is allowed to cross efficiency bar to a date subsequent to the due date then a reasoned order may be passed and a copy of the same be sent to the petitioner. This exercise should also be undertaken and completed within a period aforesaid. Rule and Special Civil Application stand disposed of in aforesaid terms with no order as to costs.

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